

THE HONORABLE JOHN C. COUGHENOUR

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

AMEL DALLUGE,

Petitioner,

v.

JERI BOE,

Respondent.

CASE NO. C21-0590-JCC

ORDER ADOPTING REPORT
AND RECOMMENDATION

This matter comes before the Court on Petitioner Amel Dalluge’s § 2254 habeas corpus petition. (Dkt. No. 7.) The Honorable J. Richard Creatura, United States Magistrate Judge, issued a Report and Recommendation (“R&R”) (Dkt. No. 36) advising the Court to deny Petitioner’s petition. Petitioner objects to the R&R. (Dkt. No. 39.) For the reasons described below, the Court hereby **OVERRULES** Petitioner’s objection, **ADOPTS** the R&R, and **DENIES** without prejudice the petition for writ of habeas corpus.

A district court must conduct a *de novo* review of those portions of a magistrate judge’s R&R to which a party properly objects. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(3). A party properly objects when the party files “specific written objections” to the magistrate judge’s R&R as required under Federal Rule of Civil Procedure 72(b)(2). In contrast, general objections or summaries of arguments previously presented have the same effect as no objection at all, since they do not focus the Court’s attention on any specific issues for review. *Howard v. Sec’y of*

1 *Health and Human Servs.*, 932 F.2d 505, 509 (6th Cir. 1991). This Court’s consideration of such
2 “objections” would entail *de novo* review of the entire report, rendering the referral to the
3 magistrate judge useless and causing a duplication of time and effort that wastes judicial
4 resources and contradicts the purposes of the Magistrates Act. *Id.* Accordingly, *de novo* review is
5 not required when a party fails to direct the court to a specific error in the report and
6 recommendation. *Strawbridge v. Sugar Mountain Resort, Inc.*, 243 F.Supp.2d 472, 475
7 (W.D.N.C. 2003).

8 Petitioner was tried and convicted as an adult of two counts of third-degree rape in 1998.
9 (Dkt. No. 36 at 2.) Following an appeal, the superior court entered an amended judgment
10 sentencing Petitioner to 25 months of imprisonment followed by 36 months of community
11 custody. (*Id.*) Petitioner appears to have fully served that sentence and is currently incarcerated
12 due to a separate 2018 conviction. (Dkt. No. 18 at 1–2 (citing Dkt. No. 19-1 at 50–72).)

13 Judge Creatura correctly recommends the Court dismiss Petitioner’s petition for lack of
14 subject matter jurisdiction because Petitioner is not currently “in custody” under § 2254(a),
15 because he is in custody for the separate 2018 conviction rather than the 1998 conviction his
16 petition challenges. (Dkt. No. 36 at 4–6.) Petitioner objects only that his current incarceration is
17 “a result of the continuous collateral consequence of the challenged conviction thus giving this
18 court subject matter jurisdiction.” (Dkt. No. 39 at 1–2.) Petitioner presented this same argument
19 in his habeas briefing, (*see* Dkt. No. 28 at 7–8), and Judge Creatura addressed the argument in
20 his R&R. (Dkt. No. 36 at 4–6 (reasoning the collateral consequence of Petitioner’s challenged
21 prior conviction is not sufficient to render him ‘in custody’ as required under § 2254(a) (citing
22 *Maleng v. Cook*, 490 U.S. 488, 492 (1989) (per curiam)).) Petitioner’s purported objection fails
23 to direct the Court to a specific error in Judge Creatura’s reasoning or authority, but rather
24 summarizes arguments previously presented. *See Strawbridge*, 243 F.Supp.2d at 475.
25 Accordingly, *de novo* review is not warranted and Petitioner’s first objection is **OVERRULED**.
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1 Irrespective of this jurisdictional issue, Judge Creatura recommends dismissal because
2 Petitioner's petition was filed beyond the one-year statute of limitations. (Dkt. No. 36 at 6–10.)
3 Petitioner objects that the Court can avoid the timeliness issue if it “simply grant[s]” Petitioner's
4 request to challenge his prior conviction. However, the Court lacks authority to disregard
5 statutory requirements. *See I.N.S. v. Pangilinan*, 486 U.S. 875, 883 (1988). Petitioner's
6 timeliness objection is **OVERRULED**.

7 Petitioner's remaining objections are substantive challenges to his 1998 conviction. (*See*
8 Dkt. No. 39 at 3–6 (arguing (1) he was wrongfully tried as an adult, (2) that the law he was
9 convicted under was vague and overbroad, and (3) the length of his sentence was excessive).) As
10 discussed above, the Court lacks jurisdiction to consider these claims. Further, these purported
11 objections fail to raise any issues specific to Judge Creatura's R&R, rendering them no objection
12 at all. *See Strawbridge*, 243 F.Supp.2d at 475. Accordingly, Petitioner's remaining objections are
13 **OVERRULED**.

14 A petitioner may appeal dismissal of his federal habeas petition only after obtaining a
15 certificate of appealability (“COA”) from a district or circuit judge, which may issue only upon a
16 “substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(3). A petitioner
17 satisfies this standard “by demonstrating that jurists of reason could disagree with the district
18 court's resolution of his constitutional claims or that jurists could conclude issues presented are
19 adequate to deserve encouragement to proceed further.” *Miller-El v. Cockrell*, 537 U.S. 322, 327
20 (2003). This Court agrees with Judge Creatura's recommendation to deny the issuance of a COA.
21 Petitioner has not demonstrated that reasonable jurists could conclude the issues presented
22 deserve encouragement to proceed further.

23 For the foregoing reasons, Petitioner's objection (Dkt. No. 39) is **OVERRULED**. The
24 Court thus **ADOPTS** the R&R (Dkt. No. 36), and **DISMISSES** without prejudice Petitioner's
25 petition for writ of habeas corpus (Dkt. No. 7.) A COA is **DENIED**.

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1 DATED this 4th day of November 2021.

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8 John C. Coughenour
9 UNITED STATES DISTRICT JUDGE
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